

(2024) 03 CAL CK 0020

In the Calcutta High Court

Case No : WPA No. 20013 Of 2019, CAN 1 Of 2020 (Old No.CAN 3885 Of 2020)

M/S IDL Explosives Limited And Anr.

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 07-03-2024

Acts Referred:

Constitution Of India, 1950 — Article 226

Explosives Rules, 2008 — Rule 2(38), 4, 5, 6, 6(4), 6(12), 6(17)(vii), 9

Citation : (2024) 03 CAL CK 0020

Hon'ble Judges : Partha Sarathi Sen, J

Bench : Single Bench

Advocate : Anuruddha Chatterjee, Kushal Chatterjee, Iftekar Munshi, Oishik Chatterjee, Tilak Kumar Bose, Anubhav Sinha, Nikhil Kumar Roy, Sunil Kumar Singhanian, Twinkle Kaur, Anubhav Sinha, Pallavi Ray

Final Decision : Dismissed

Judgement

Partha Sarathi Sen, J

1. In this writ petition as filed under Article 226 of the Constitution of India, the writ petitioner being an authorized explosive manufacturer and supplier has prayed for a direction upon the respondents, more specifically respondent no.2/ Coal India Limited (CIL in short) to conduct the testing of the explosive as supplied by the writ petitioner to the respondent no.2/ CIL by Chief Controller of Explosives with a further prayer for issuance of appropriate writ restraining the respondent no.2/CIL from conducting such test by CMPDI/ respondent no.8 herein pursuant to the notice inviting tender dated 12.07.2019.

2. From the materials as placed before this Court by the parties to the instant writ petition it reveals that respondent no.2/CIL issued notice inviting tender-cum-E-Reserve auction for supply of bulk explosives in the year 2017 and 2019. Pursuant to such Notice Inviting Tenders (NIT in short) the writ petitioner participated in the said tender processes and in course of the bidding process, the writ petitioner is found to be a successful bidder. Thereafter, two running

contracts which were valid for two years and commenced from 01.11.2017 and 10.10.2019 respectively were entered into by and between the writ petitioner and the respondent no.2/CIL. In accordance with the terms of contract the writ petitioners supplied permitted explosives to the respondent no.2/CIL which has been tested by the respondent no.8 company/CMPDI and the outcome of the said test result of the explosives are found to be not satisfactory.

3. According to the respondent no.2/CIL for non-supply of requisite standard of explosives pursuant to the said contracts, the respondent no.2/Authority has imposed penalty upon the writ petitioner causing deduction of the bills of the writ petitioner to which the writ petitioner felt aggrieved and filed the instant writ petition. It is pertinent to mention herein that a Co-ordinate Bench of this Court at the motion stage of the instant writ petition by its order dated 20.11.2019 passed the following order:-

“If any test pertaining to the explosives-in-question are conducted by the respondent no.2 in the meantime, such test will abide by the result of the writ petition.”

4. In support of the instant writ petition Mr. Anuruddha Chatterjee, duly assisted by Mr. Kushal Chatterjee, learned advocates for the writ petitioner at the very outset submits before this Court that respondent no.2/ CIL has violated the provisions of the Explosives Rules, 2008 (hereinafter referred to as the said Rules of 2008) in allowing the explosives to be tested through CMPDI/ respondent no.8. In course of his argument Mr. Chatterjee, learned advocate for the writ petitioners at the very outset draws attention of this Court to Rule 6(12) of the said Rules of 2008. It is argued on behalf of the writ petitioner that the said Rules mandates that Chief Controller of Explosive is the appropriate authority to verify the approved composition and characteristics of the explosives at the departmental testing station. Drawing attention to Rules 6(4) of the said Rule of 2008 it is further argued that the said Rules further prescribe that it is the Chief Controller of Explosive who can pass appropriate instruction for requiring a sample of explosive tested and the manner in which such sample is required to be forwarded to the departmental testing stage.

5. It is further argued by Mr.Chatterjee, learned advocate for the writ petitioner that from page nos.68 and 69 of the writ petition it would reveal that the present writ petitioner is the manufacturer of the bulk explosives which are required to be delivered in terms of the said NIT and from page no.69 it would further reveal that testing parameter of the said bulk explosives have been enumerated there in details. It is contended on behalf of the writ petitioner that since the respondent no.8/ CMPDI is not authorized under the said Rules of 2008 to conduct such test and since such test has been carried out not as per specification as mentioned in the said NIT, the result differed which adversely affect the interest of the writ petitioner. It is further argued on behalf of the writ petitioner that since the said Rules of 2008 prescribes an appropriate authority for testing authorized/bulk explosive in a particular manner, the respondent no.2/

CIL and the respondent no.8/CMPDI have acted without their jurisdiction and their joint action tantamounts to violation of statutory provisions for which the writ petitioner's legal right has been violated.

6. Drawing attention to page nos. 105 and 106 being Annexure P2 collectively of the writ petition it is submitted by Mr. Chatterjee, learned advocate for the writ petitioner that from the correspondences dated 7.08.2019 and 10.07.2019 as issued by Petroleum and Explosives Safety Organization (in short PESO), Government of India and Director of Mines Safety, Ministry of Labour and Employment respectively, it would reveal that in the Coal Mines Regulations, 2017 there is no provision for testing of explosives either by Director of Mines Safety or by DGMS and further for testing of explosives, Rule 6(12) and Rule 39 of the said Rules of 2008 are to be followed and from the letter of Director of Mines Safety dated 10.07.2019 (annexure P2 of the writ petition) it would reveal further that use of explosive and short firing in mines are regulated by Coal Mines Regulation, 2017 (hereinafter referred to as the said 'Regulation' in short) but there is no provision of testing of explosives in the said Regulation.

7. Drawing attention of this Court to the affidavits-in-opposition as filed by the respondent no.2/CIL and respondent no.8/CMPDI it is argued by Mr. Chatterjee, learned advocate for the writ petitioner that in their respective affidavits-in-opposition respondent no.2 and respondent no.8 had taken a wrong stand citing that they are covered under the said Regulation. It is thus argued on behalf of the writ petitioner that since the respondent no.8/ CMPDI is an independent organization having no legal sanction for conducting test within the meaning of said Rules of 2008 the respondent no.2/CIL is not justified in testing the explosives as supplied by the writ petitioner violating the prevailing Rules relating to the testing of the explosives.

8. Drawing attention to page no.43 of the instant writ petition it is further argued by Mr.Chatterjee that though in the aforesaid NIT 'Clause 8 random test' prescribes testing by respondent no.8/CMPDI but inclusion of the said Clause in the NIT has got no binding effect since the said Clause has been incorporated violating the statutory provisions as incorporated in the said Rules of 2008. In course of his argument Mr. Chatterjee places his reliance upon the reported decision of M. Aamira Fathima & Ors vs. Annamalai University and Ors reported in (2018) 9 SCC 171. Drawing attention to paragraph no.21 of the reported decision of M. Aamira Fathima(supra) it is argued by Mr. Chatterjee, learned advocate for the writ petitioner that the Hon'ble Apex Court in the said reported decision expressed the view that if a particular modality is prescribed by the legislature, any action in defiance or ignorance of such modality cannot be protected or preserved on the plea of estoppel. It is thus argued by Mr. Chatterjee, learned advocate that even if the NIT contains the clause for testing of explosives by respondent no.8/CMPDI, the same cannot be treated as a valid clause since the modality of test and the authority of the testing of explosives have been specifically mentioned in the said Rule of 2008 and therefore the said

clause cannot have any binding effect upon the writ petitioner since the same have been incorporated overlooking the statutory provision Mr. Chatterjee, learned advocate for the writ petitioner thus submits that it is a fit case for allowing the instant writ petition.

9. Per contra, Mr. Bose, learned senior counsel appearing for respondent no.2/ CIL submits before this Court that from the NIT as has been annexed to the writ petition it would reveal that such tender has been floated for 'Conclusion of Running Contracts and Empanelment as Reserved Running Contract Holders' for a period of two years only and since the said two successive years of the said running contracts have already been expired, the instant two writ petitions have practically become infertile.

10. Drawing attention to paragraph 5 and paragraph 10 to the instant writ petition it is argued by Mr. Bose, learned senior counsel appearing for the respondent no.2/ CIL that from the materials as placed before this Court it would reveal that in the instant writ petition, the writ petitioner has alleged violation of the terms and conditions of two non-statutory running contracts and therefore the same is not amenable to the writ jurisdiction in view of the availability of the alternative remedy.

11. It is further argued by Mr. Bose, learned senior counsel for respondent no.2/ CIL that it is the salutary principle of law that after entering into a contract, a party to such contract cannot challenge certain clause(s) of the said contract that too by filing a writ petition. Drawing further attention to 'Annexure 2' to the NIT at page no. 40 of the writ petition it is argued by Mr. Bose that in the said NIT it has been specifically mentioned that eligibility of a supplier has to be duly certified by respondent no.8/CMPDI and therefore the writ petitioner after being satisfied that it has been certified by the said respondent no.8 participated in the bidding process and thereafter entered into two running contracts of 2017 and 2018 respectively and thus after entering into the said contract the writ petitioner cannot be permitted to challenge the authority of the CMPDI, the respondent no.8 herein.

12. In course of his argument Mr. Bose further draws attention of this court to Rule 6(17) (VII). It is argued by Mr. Bose that even the said Rules of 2008 permits to conduct test and field trial by respondent no.8/CMPDI. Drawing attention to page 112,114 and 115 of the affidavits-in-opposition being the photocopy of the running contract which has been commenced on 10.10.2019 it is argued on behalf of respondent no.2 that in the said contract it has been specifically provided that quarterly random test of bulk explosives would be conducted by respondent nos.2 and 8 and in the event of failure to achieve the bench mark that would attract penalty as has been mentioned in 'Performance and Penalty Clause' of the said Contract. It is thus argued on behalf of the respondent no.2 that since in the test conducted by respondent no.8/CMPDI a bulk explosive could not achieve the bench mark, the writ petitioner is very much within his right to impose penalty upon the supplier who is the writ petitioner

before this Court.

13. In course of his argument Mr. Bose, learned Senior Counsel appearing for respondent no.2 further draws attention of this Court to the Chapter II of the said Rules 2008. It is argued by Mr. Bose that Rule 6 of the said Rules of 2008 comes under the said Chapter II which deals with "Classification, Categorization and Authorization". It is further argued by Mr. Bose, learned counsel for the respondent no.2 that on conjoint perusal of Rule 4, Rule 5 and Rule 6 of Chapter 2 of the said Rules of 2008 it would reveal that the said chapter deals with the manufacturers, importers, exporters, transporters, sellers of the authorized / permitted explosives and therefore the respondent no.2 being the consignee of the permitted explosives cannot be construed to be covered under the said chapter. It is further argued by Mr. Bose that the activities of the respondent no.2 Organization are being guided by the said Regulations of 2017 and Mines Act, 1952. Drawing attention to Chapter 14 of the said Regulations of 2017 it is argued by Mr. Bose, learned senior counsel that the said chapter deals with explosive and short firing and on perusal of the Regulations of the said chapter it would reveal that the said Regulation permits respondent no.2 to conduct test of the supplied explosives to ascertain its quality and condition. Mr. Bose, in course of his argument placed his reliance upon the following reported decisions:-

- i. Monte Carlo Limited vs. National Thermal Power Corporation reported in (2016) 15 SCC 272;
- ii. Meerut Development Authority vs. Association of Management Studies And Anr. reported in (2009) 6 SCC 171;
- iii. Rishikesh Chem And Anr. vs. State of West Bengal and Ors. reported in 2023 SCC Online Cal 1312 : AIR 2023 Cal 250;
- iv. State of Gujarat and Ors vs. Meghji Pethraj Shah Charitable Trust and Ors reported in (1994) 2 SCC 552;
- v. State of U.P and Ors. vs. Bridge And Roof Company (India) Ltd. reported in (1996) 6 SCC 22.

Mr. Bose, learned Senior Counsel appearing for respondent no.2 thus submits that it is a fit case for dismissal of the instant writ petition.

14. Mr. Sinha, learned advocate appearing on behalf of respondent no.8/ CMPDI while echoing version of Mr. Bose submits before this Court that in absence of any prescription for testing by a statutory authority by a consignee, it cannot be said that the respondent no.8/CMPDI being a 100% Government owned company and being a mine planning and designing institute is not the competent authority to test the quality of the permitted explosives as supplied to respondent no.2 by the writ petitioner.

15. Drawing attention to 'Annexure A' to the rejoinder of respondent no.8 to the affidavit-in-opposition as filed by respondent no.6 and respondent no.7 it is

contended that from the photo copy of the said letter as written by Controller of Explosives it would reveal that in the subject of random testing of explosives by testing agency/CMPDI i.e. respondent no.8 herein they have been asked to maintain a separate register while doing the said test. In course of his argument Mr. Sinha also places his reliance upon Regulation 183 , Regulation 194 and Regulation 198 of the said Regulations of 2017. It is thus argued by Mr. Sinha that since under the NIT as well as under the two running contracts it has been specifically mentioned that the respondent no.8/CMPDI would conduct test, the writ petitioner may be estopped from challenging the authority of the respondent no.8 by filing the instant writ petition.

16. In course of his argument Mr. Singhanian, learned advocate for the respondent nos.6 and 7 however supports the case of the writ petitioner. It is argued by him that it is the Chief Controller of Explosives and not the CMPDI who can conduct such test under the said Rules of 1998.

17. This court has meticulously perused the entire materials as placed from the side of the contending parties. This Court has also given its due consideration over the arguments as advanced by the learned advocates for the contending parties. This Court has also meticulously gone through the said Rules of 1998 and the said Regulation of 2017. This Court has also considered the reported decisions as cited from the Bar.

18. Admittedly, on 12.07.2019 a tender was floated by the respondent no.2 for supply of bulk explosives and the writ petitioner is found to be a successful bidder and thereafter two successive running contracts for two years have been entered into by and between the petitioner and the respondent no.2. Clause 2(5) of the said Rules of 2008 deals with the definition of authorized explosives and the same is reproduced hereinbelow in verbatim:-

"2.(5) "authorized explosive" means an explosive included in the list of authorised explosives referred to in Rule 6 and published by the Central Government from time to time in the Official Gazette;

....."

19. Rule 2 (38) of the said Rules of 2008 defines permitted explosives in the manner hereunder:-

"2(38). "permitted explosives" means authorized explosive which is permitted by the Director General of Mines Safety to be used in underground coal mines;"

20. On conjoint perusal of the said Rules of 2008, said Regulations of 2017 and the NIT dated 12.07.2019 it appears to this Court that the bulk explosives as has been mentioned in the NIT practically refers to 'permitted explosives' within the meaning of Rule 2(38) of the said Rules of 2008. Since in the present lis a dispute arose between the writ petitioner and the respondent no.2/Authority with regard to the competency of the respondent no.8/CMPDI to carry out the test by the said organization/ CMPDI this Court also proposes to have a look to Rule 6 of

the said Rules of 2008:-

"6.Authorization of Explosives:-

1.No person shall manufacture, import, export, transport, possess, sell or use any explosive unless it has been declared as an authorized explosive, by an order issued by the Chief Controller and published in the official website of the Petroleum and Explosives Safety Organization.

Provided that nothing in this rule shall apply to the manufacture of explosives for armed forces of the Union and Ordnance factories or other establishments of Ministry of Defence or manufacture and possession for test and trial purposes and not for sale of a new explosive composition under the development at a place specially approved for the purpose by the Chief Controller.

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4.When, in the opinion of the Chief Controller, an explosive in respect of which an application is made may properly be considered for authorization, the Chief controller shall instruct the applicant as to the samples required and the manner of forwarding the same to the Departmental Testing Station, or Fireworks Research and Development Centre, or to any other authority specified by the Chief Controller in this behalf for testing thereof along with prescribed fees.

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8.An explosive tested in accordance with sub-rule (7) shall be declared by the Chief Controller to be an authorized explosive if, he is satisfied that such an explosive can be safely manufactured , handled ,stored, transported and used.

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11.....

12. The Chief Controller, may, on his own accord once in a year or on the request of manufacturer or importer or exporter or consignor, subject any explosive to the test enumerated in clause (ii) of sub-rule (7) to verify the approved composition and characteristics of the explosives at the Departmental Testing Station or Fireworks Research and Development Centre and as a result of the tests or otherwise, if the Chief Controller is satisfied that the explosive is no longer safe for manufacture, handling, storage, transport or use, or unfit for continuation of authorization, may delete such explosive from the authorized list after giving the applicant or licensee an adequate opportunity of being heard.

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15.

16 (i) No alteration in the composition, limiting percentage of ingredients or substitute ingredients, the process of manufacture, the description and construction of the case or the contrivance as submitted in accordance with sub-rule (3) shall be carried out without prior approval of the Chief Controller.

(ii) The Chief Controller may order fresh test to be carried out if the proposed alteration in the percentage, composition, nature of ingredients, process of manufacture or construction of the case or contrivance of the explosive are likely to change the results of the original test prescribed in these rules.

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vii. For permitted explosives, test report and field trial report from Central Institute of Mining and Fuel Research and Central Mine Planning and Design Institute are required to be submitted to the Chief Controller and in case of non-permitted explosives field trial report from reputed mining or construction company.

viii.....

21. On perusal of the aforesaid Rule 6 of the said Rules of 2008 it appears to this Court that as rightly argued by Mr. Bose, learned senior advocate for respondent no.2 that the said Rule practically deals with the authorities, rights and obligations of the manufacturer and /or importer and/or exporter and/or transporters and/or possessors and/or sellers. On close scrutiny of the said Rule it does not appear to this Court that Rule 6 of the said Rules of 2008 deals with any duties and obligations of a consignee of the permitted explosive. It thus appears to this Court that the Chief Controller of Explosive and /or PESO is/are the appropriate and sole authority/authorities to conduct the test of quality and to fix the bench mark of the permitted explosives as has been procured by the respondent no.2/ CIL being the consignee thereof. On the contrary Rule 6(17) (vii) as quoted (supra), it appears to this Court that while framing Rules of 2008 as per provision of The Explosives Act,1884, the appropriate authority had permitted to conduct test and field trial of permitted explosives by CMPDI who is respondent no.8 herein. This court thus is in respectful disagreement with the

submission of Mr. Chatterjee, learned advocate for the writ petitioners that respondent no.2/CIL has violated the statutory provisions in conducting test of permitted explosives by CMPDI instead of Chief Controller of Explosives and/or PESO.

22. At this juncture this Court proposes to look to the reported decision as cited from the side of respondent no.2. In the reported decision of Meerut Development Authority (supra) the Hon'ble Apex Court while discussing the characteristics of a tender and the nature of rights of a bidder participating in the tender process expressed the following view:-

"26. A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated it must be unconditional; must be in the proper form, the person by whom tender is made must be able to and willing to perform his obligations. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. However, a limited judicial review may be available in cases where it is established that the terms of the invitation to tender were so tailor-made to suit the convenience of any particular person with a view to eliminate all others from participating in the bidding process.

27. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the abovestated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations."

23. In the reported decision of Rishikesh Chem (supra) the Hon'ble Apex Court duly examined the scope of interference of a Constitutional Court in the matter of tender and held the following:-

"16. To start with, it is now well established that the scope of interfering with a tender matter in exercise of jurisdiction under Article 226 of the Constitution of India, is extremely limited. A tenderer cannot challenge a term/ condition of the tender just because it does not suit him. The Government and its undertakings as well as statutory bodies like KMC must have a free hand in settling the terms of a tender. The Court cannot interfere just because it feels that some other tender term would have been fairer, wiser or more logical. Generally speaking, the Court must exercise judicial restraint in administrative actions. The writ Court does not sit like a Court of Appeal over the concerned authority which has floated the tender and which is the best judge of its requirements. The Court's interference should be minimal and it must exercise restraint and caution. The Government must have freedom of contract and is in the best position to

understand and appreciate its requirements.

17.....

18. Courts must exercise restraint in interfering in tender matters. The parties are governed by the principles of commercial prudence and to that extent, principles of equity and natural justice have to stay at a distance. (Please see *Uflex Limited v. Government of Tamil Nadu*, (2022) 1 SCC 165).

19. The rights of a bidder participating in the tender process have been stated by the Hon'ble Supreme Court in the case of *Meerut Development Authority v. Association of Management Studies & Anr.* (2009) 6 SCC 171. At paragraphs 26 to 29 of the reported judgment, the Hon'ble Apex Court has held as follows:-

"26. A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated it must be unconditional; must be in the proper form, the person by whom tender is made must be able to and willing to perform his obligations. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. However, a limited judicial review may be available in cases where it is established that the terms of the invitation to tender were so tailor-made to suit the convenience of any particular person with a view to eliminate all others from participating in the bidding process.

27. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in 2023:CHC-AS:23270-DB 12 response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the above stated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations.

28. It is so well-settled in law and needs no restatement at our hands that disposal of the public property by the State or its instrumentalities partakes the character of a trust. The methods to be adopted for disposal of public property must be fair and transparent providing an opportunity to all the interested persons to participate in the process.

29. The Authority has the right not to accept the highest bid and even to prefer a tender other than the highest bidder, if there exist good and sufficient reasons, such as, the highest bid not representing the market price but there cannot be any doubt that the Authority's action in accepting or refusing the bid must be free from arbitrariness or favouritism."

24. The Hon'ble Apex Court has also occasion to examine the scope of interference by a Constitutional Court in exercise of its writ jurisdiction in a case of non-statutory contract in the reported decision of *Meghji Pethraj Shah*

Charitable Trust (supra) where the Hon'ble Apex Court expressed the following view:-

"22..... If the matter is governed by a contract, the writ petition is not maintainable since it is a public law remedy and is not available in private law field, e.g., where the matter is governed by a non-statutory contract." Be that as it may, in view of our opinion on the main question, it is not necessary to pursue this reasoning further."

25. The same view was taken by the Hon'ble Apex Court in the case of Bridge and Roof Company(supra) on the ground of availability of alternative remedy which is reproduced hereunder in verbatim:-

"21. There is yet another substantial reason for not entertaining the writ petition. The contract in question contains a clause providing inter alia for settlement of disputes by reference to arbitration (clause 67 of the contract). The arbitrators can decide both questions of fact as well as questions of law. When the contract itself provides for a mode of settlement of disputes arising from the contract, there is no reason why the parties should not follow and adopt that remedy and invoke the extraordinary jurisdiction of the High court under Article 226. The existence of an effective alternative remedy-in this case, provided in the contract itself-is a good ground for the court to decline to exercise its extraordinary jurisdiction under Article 226. The said article was not meant to supplant the existing remedies at law but only to supplement them in certain well-recognized situations. As pointed out above, the prayer for issuance of a writ of mandamus was wholly misconceived in this case since the respondent was not seeking to enforce any statutory right of theirs nor was it seeking to enforce any statutory obligation cast upon the appellants. Indeed, the very resort to Article 226 – whether for issuance of mandamus or any other writ, order or direction – was misconceived for the reasons mentioned supra."

26. In the reported decision of Monte Carlo Ltd. (supra) the Hon'ble Apex Court considered inherent limitations on the part of the Constitutional Court in examining the details of terms of contract and in doing so expressed the following view:-

"19. In Sterling computers Ltd vs. M & N Publications Ltd. , the Court has held that under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. It has also been observed that by way of judicial review the Court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Courts have inherent limitations on the scope of any such enquiry."

27. On perusal of the aforesaid reported decisions as cited on behalf of the respondent no.2/CIL it thus appears to this Court that since the contract between the writ petitioner and the respondent no.2/CIL is a non-statutory contract, this

Court in its writ jurisdiction under Article 226 of the Constitution of India has no authority to examine the legality and validity of the terms of the contract not only on the ground of inherent limitation on the part of this Court to make such enquiry but also on the ground of availability of the alternative remedy.

28. On perusal of the entire writ petition including its annexures it does not transpires to this Court that the writ petitioner is denied of equality and fair treatment and the conduct of the respondent no.2/CIL in testing the explosives as supplied by the writ petitioner to the respondent no.2 by respondent no.8 is violative of principle of natural justice. It does not also transpires to this Court that the writ petitioner is successful in establishing that the respondent no.8/ CMPDI is not the competent statutory authority in testing the quality and bench mark of the explosives supplied and on the contrary it appears to this Court that Rule 6(17)(vii) of the said Rule of 2008 gives authority to respondent no.8/ CMPDI to conduct field trial and test of permitted explosive.

29. The reported decision of M. Aamira Fathima (supra) as cited from the side of the writ petitioner in considered view of this Court has been passed in a different perspective which is distinguishable from the facts and circumstances of the present case.

30. This Court thus finds no merit in the instant writ petition and the instant writ petition is thus dismissed.

31. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.